

MONTANA PUBLIC DEFENDER COMMISSION

CONFERENCE CALL

Public Location: Helena Regional Office
139 North Last Chance Gulch, Helena, MT 59601

March 22, 2016

MINUTES

(Approved at the May 17, 2016 meeting)

Commissioners Present

Richard E. "Fritz" Gillespie, (Chair), Helena; Margaret Novak, Chester; Ann Sherwood, Pablo; Larry Mansch, Missoula; Brian Gallik, Bozeman; Terry Jessee, Billings; Maylinn Smith, Missoula; Mark Parker, Billings

Commissioners Absent

Bonnie Olson, Marion; Roy Brown, Billings; Mike Metzger, Billings;

Staff Members Present

Bill Hooks, Chief Public Defender; Chad Wright, Chief Appellate Defender; Kristina Neal, Conflict Coordinator; Harry Freebourn, Administrative Director; Wendy Johnson, Contract Manager; Carleen Green, Accountant; Cathy Doyle, Administrative Assistant

Interested Parties

Greg DeWitt, Legislative Fiscal Division; Malissa Williams, Office of Budget and Program Planning; Jim Taylor, Legal Director, ACLU Montana

1. Call to Order

Chairman Gillespie called the meeting of the Public Defender Commission to order at 1:05 p.m.

2. Roll Call

The roll was called and a quorum was established.

3. Set Priorities for Potential Legislation for 2017 Session (Action Item)

Detailed legislation is not required yet. For today, the purpose is to identify and set priorities on the legislation that the Commission plans to develop for the next session. No new proposals were suggested in addition to the six posted with the meeting materials.

Commissioner Jesse moved to prioritize the six proposals as follows:

Amend Title 47 to incorporate new organizational structure	#1
Address accounts receivable issue	#2
Convert selected crimes to civil sanctions, no jail time	#4
Remove jail time from certain driving offenses	#3
No representation for unknown parent	#5
Require proficiency determination for select contractors	#6

Commissioner Novak seconded and the motion carried.

Mr. Freebourn asked the Commission to comment on whether each item is anticipated to be controversial. This is required as part of the submission to OBPP. Consensus was as follows:

Amend Title 47 to incorporate new organizational structure	Yes
Address accounts receivable issue	Yes
Convert selected crimes to civil sanctions, no jail time	Yes
Remove jail time from certain driving offenses	Yes
No representation for unknown parent	No
Require proficiency determination for select contractors	Yes

All of the proposals will advance, but can be withdrawn at any time.

4. Agency Reorganization

Chairman Gillespie stated that there is not a great deal of difference between the two models that have been under consideration—four co-equal programs vs. the top-down model presented with the meeting materials. The top-down model makes it look like the three existing program managers would have to go through the executive director to communicate with the Commission, but that isn't what was intended. The Commission is used to hearing from the individual programs and he doesn't want that to change. Identifying the roles and duties of each of the program leaders will be critical.

There is consensus that Central Services will move to a new program under the new administrator. That person will be the voice of the agency, and will primarily be responsible for administrative compliance and budgeting. The chief administrator will have the authority to go to another program manager to say they are not in compliance with policy or statute so that they can work together to achieve compliance.

Chairman Gillespie suggested adopting a model and then charging the Personnel Committee to work out the detailed roles and responsibilities, and how the program managers work together. Managing pre-approvals is an area that could come close to interfering with the professional judgment of the lawyer providing representation; the highest levels of cooperation, tact and diplomacy will need to occur between the chief administrator and the other program managers.

Chairman Gillespie asked for thoughts from the Commission members. Several members supported the co-equal model, especially given the current staff. Some had concerns about who will ultimately be in charge. Chairman Gillespie clarified that the Commission would be part of Program 4 only for budget purposes; they would still supervise all four programs.

Staff were invited to comment, followed by the public. Chief Hooks has started to work on legislative changes. The statutory duties of the chief administrator will be legislative, budget and operations. Ms. Neal noted that Kevin Kajer, Chief Administrator in the Minnesota public defender system, is in charge of everything administrative, but he doesn't do anything with legal matters. It works for them.

Jim Taylor commented that Chief Justice McGrath was open to taking the application process back, but it isn't on the list of OPD's proposed legislation. Chairman Gillespie said that there are

concerns about possible political interference by the judges, which was a problem before the creation of the statewide system. However, Chief Hooks and others will be in discussion with Chief McGrath.

Mr. Taylor had several comments regarding the reorganization. Mr. Taylor is fully convinced that the current program managers will get along, but he said you can't build a structure based on personalities. He doesn't think the co-equal structure will work when conflicts develop; he said the chief administrator has to have clear authority to carry out the wishes of the Commission. Someone has to be in charge when it comes down to it, and the co-equal model breaks down then. Chairman Gillespie responded that the Commission is the arbiter if the program managers can't come to agreement.

Mr. Taylor asked Chairman Gillespie to comment on the recent changes in the Billings office. Chief Hooks is working on a transition plan; he's already met with staff and has started meeting with local judges. No other details will be released regarding a personnel issue.

A. Intent to Create a New Program (Action Item)

Chairman Gillespie thinks that a consensus has been reached that the reorganization will consist of four co-equal programs, where the roles of the programs will be carefully defined and the authority of each program manager will be clearly spelled out. The new chief administrator will be the agency spokesman and will have administrative functions, and authority to ensure compliance from the other three programs. The other program leaders will also have a direct line to the Commission, creating a system of checks and balances.

Commissioner Novak moved to adopt the four co-equal program model. Commissioner Jessee seconded and the motion carried.

Mr. Freebourn clarified that the Commission will be included with Central Services in Program 4 for funding purposes. That is correct. Chairman Gillespie asked if everyone understands that the functions on the left side of his draft organizational chart will move to Program 4 with Central Services. Yes, there is consensus regarding those functions.

B. Model for Executive Director (Action Item)

Chairman Gillespie said that he worked with State Human Resources and the budget office to develop a job description and a vacancy announcement. The critical thing for the Commission to decide is if the chief administrator needs to be a lawyer or not. He thinks there is consensus that the administrative skill sets are key, and a law degree is optional.

Commissioner Jessed moved that the chief administrator position does not require a law degree, and that Chairman Gillespie be authorized to post the vacancy announcement on behalf of the Commission. Commissioner Gallik seconded. Commissioner Sherwood asked that the job announcement be circulated for review and comment before posting. Chairman Gillespie agreed. Even though he has been working with the budget office and State HR, the Commission is responsible for determining qualifications and conducting the hiring process.

There was no further discussion and the motion carried.

5. FY 17 Biennium Financial Estimate

Mr. Freebourn reported that he submitted a memo to OBPP regarding an anticipated shortfall for the biennium. The estimate is based on actual financials through February 29, 2016, and planned expenditures and run rates for the remainder of the biennium.

The main reason for the anticipated shortfall is an overall case growth of 6% in FY 15 (1,900 additional cases over the previous fiscal year), and a huge growth in DN cases—30% in FY 15 and another 20% in FY 16. The current projection is for a shortfall of \$3.5 million for the biennium across all programs. Potential reductions could result in savings of up to \$1.5 million, so the lower level forecast is about \$2 million. The agency is working on a mitigation strategy.

6. Public Comment

There was no additional public comment.

7. Old Business/New Business

A. Priorities for Potential Legislation (Action Item)

B. Approve Intent to Create New Program (Action Item)

C. Approve Executive Director Model (Action Item)

Action was previously taken on each of these items.

Chairman Gillespie inquired if there was additional new business.

Commissioner Jessee wondered if exit interviews are being conducted, and if so, why turnover is high again. Mr. Freebourn said offices are doing exit interviews. Even though the attorney career ladder was funded and the support staff pay was brought up to the 2014 market, turnover is back up to almost one in three. This, along with the exit interviews, leads him to believe turnover is a workload issue, not a pay issue.

Chairman Gillespie said that there will always be a workload issue, and noted that attorney turnover is relatively low after five years. Some young lawyers find that not only is the workload heavy, but the work itself doesn't suit them. The Task Force wants to know what they might be able to do to help with retention. Chief Hooks and others are working on this.

8. Set Future Commission Meeting Dates

The next meeting will be scheduled for some time in April.

9. Adjourn

The meeting adjourned at 2:40 p.m.